IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

OP.No. 11166 of 1998(D)

PETITIONER:

THE KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED
BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN, EAST FORT,TRIVANDRUM.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC
SRI.T.RAVIKUMAR SC KSRTC

RESPONDENTS:
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1. B. ANIL KUMAR, ASHOKBHAVAN, ATTINGAL, THIRUVANANTHAPURAM.

2. ADDL. SECRETARY TO GOVT. PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM.

3. SECRETARY, PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM.

4. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY.

R1 BY ADV. SRI.G.JANARDHANA KURUP (SR.)
SRI.MURALI PURUSHOTHAMAN
R2 TO R4 BY GOVERNMENT PLEADER SMT. R. BINDU
SRI.JAI GEORGE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 21/02/2007, ALONG WITH OP NO. 5093 OF 1998
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 19246/98, 30156/99, CMP 34522/99 IN OP 19246/98 & 14150/2000 IN OP 11166/98

DISMISSED

21.2.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE GOVT. ORDER DATED 30.7.1995

EXT.P2 TRUE COPY OF THE STATEMENT OF THE FIRST RESPONDENT

EXT.P3 TRUE COPY OF THE JUDGMENT IN OP 13726 OF 1996

EXT.P4 TRUE COPY OF THE GOVT. ORDER NO. GO (RT) 371/97 DATED 21.11.1997

FIRST RESPONDENT'S EXHIBITS:

EXT.R1(a) TRUE COPY OF ORDER NO. TRBS 87652/88 DATED 13.7.1990 ISSUED BY THE KSRTC

EXT.R1(b) TRUE COPY OF ORDER IN CMP 7664 OF 1994 IN OP 3484 OF 1994 DATED 24.3.1994 BY THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.

EXT.R1(c) TRUE COPY OF JUDGMENT IN OP 3484 OF 1994 M DATED 4.7.1994 ISSUED BY THE HIGH COURT OF KERALA.

EXT.R1(d) TRUE COPY OF JUDGMENT IN OP NO. 15810 OF 1994 F DATED 29.9.1995 ISSUED BY THE HIGH COURT OF KERALA.

EXT.R1(e) TRUE PHOTOCOPY OF G.O.(P) NO. 39/93/P & ARD DATED 23.8.1993 ISSUED BY THE GOVERNMENT OF KERALA (RELEVANT PORTION)

EXT.R1(f) TRUE COPY OF ORDER IN OP NO. 5093 OF 1998 DATED 17.4.1998 BY THE HON. HIGH COURT OF KERALA.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 11166 & 5093 OF 1998

Dated this the 21st day of February, 2007

JUDGMENT

Since the issue raised in both the O.Ps. is the same, O.Ps. are clubbed, heard together and are disposed of by this common judgment.

2. Parties, documents and facts referred to in this judgment are from O.P.No. 11166 of 1998 filed by the Kerala State Road Transport Corporation Ltd. challenging the order of the Government granting additional toll amount to the first respondent, over and above what was granted by the Government earlier vide Ext.P1. The connected O.P., O.P.No. 5093 of 1998 is filed by the first respondent in O.P.No. 11166 of 1998, for direction to the KSRTC to make payment of the balance amount in terms of Ext.P4 order. I heard counsel appearing for the petitioner, first respondent and Government Pleader and I have gone through the records produced including Exts.P1 and P4.

3. The first respondent was given contract for collection of toll charges for use of vehicles through Mamom Bridge on the National Highway NH 47 for the period from 12.4.1993 to 31.3.1994. Even

after opening of new bridge, KSRTC was using the old bridge to avoid payment of toll charges. The first respondent appeared to have caused damage and obstruction to the approach road of old bridge obviously to divert all the vehicles including KSRTC's to pass through the new bridge to collect toll charges. Crime No. 147 of 1994 was registered by the Sub Inspector of Police, Attingal against the first respondent for the damage done to the old road and old bridge. It is not known what is the fate of the said criminal case. Even though the issue has a direct bearing, there is no necessity to go into the details of the said crime for the disposal of these cases. There is nothing on record to prove the date on which KSRTC started operating their vehicles over the new bridge attracting toll charges. However, this Court vide judgment produced as Ext.R1(c) dated 4.7.1994 directed the Superintending Engineer, National Highways to prohibit use of old bridge by KSRTC and to close down the old bridge for use by heavy vehicles. It is not known as to when this order was implemented and KSRTC vehicles were compelled to use the new bridge. It is found by Government in Ext.P1 order that old bridge was in fact closed on 22.9.1994 implying

that KSRTC started operation of their vehicles only from 23.9.1994 onwards. However, first respondent still allowed the KSRTC to ply vehicles through the new bridge without collecting toll charges. The first respondent's representation dated 13.10.1995 claiming toll charges from the KSRTC was considered by the Government pursuant to judgment of this Court in OP Nos. 13845 and 15810 of 1994 and the same was disposed of vide Ext.P1 order dated 30.7.1996. The first respondent's claim that KSRTC was plying vehicles from the beginning of contract was found against the first respondent in Ext.P1 and the clear-cut finding with regard to date of commencement of operation by KSRTC by the Government is 23.9.1994. The next issue considered was the number of vehicle operated over the new bridge to compute the toll liability. Even though first respondent claimed that 385 vehicles per day were operated either way, there was no document to prove it and the data produced was found to be intrinsically unreliable. However, on the basis of toll charges paid by the KSRTC for preceding years, and based on the increase in number of operations, the Government came to a rational finding that 260 vehicles would

have been operated by KSRTC attracting liability for those trips. Accordingly Government fixed liability on the KSRTC for use of 260 vehicles per day for a period of 190 days covering from 23.9.1994 to 31.3.1995. Since up and down operations were taken for grant of toll charges, the benefit of one and a half times of one way rate available to other vehicle operators was granted. The total liability was fixed by Govt. vide Ext.P1 at Rs. 11,11,500/-. After reckoning the payment of Rs. 4,70,000/- already made by the KSRTC, the KSRTC was ordered to pay balance amount of Rs. 6,41,500/-. When KSRTC failed to pay this amount, first respondent filed O.P.No. 13726 of 1996 in this Court and after recording the submission of standing counsel for KSRTC that payment would be made within three months from 27.9.1996, the said O.P. was closed. The first respondent got the full payment pursuant to Ext.P1 order.

4. Even though first respondent was heard and detailed order was issued vide Ext.P1 with regard to date of commencement of operation by the KSRTC, the number of vehicles operated daily and the rate aplied, the first respondent did not challenge the same when he filed

O.P. No. 13726 of 1996 in this Court. Therefore Ext.P1 has become final. However, after recovering the amount awarded vide Ext.P1, the first respondent filed a Review Petition on 5.3.1997 before the Government which is allowed in his favour vide Ext.P4. It is against this order that the KSRTC has filed O.P.No. 11166 of 1998 on the ground that the Government has no power to review the earlier order. The further contention of KSRTC is that findings in Ext.P4 are illegal, based on no material, arbitrary and perverse. The first respondent on the other hand filed O.P.No. 5093 of 1998 for enforcement of Ext.P4.

5. In the first place, I do not find any authority for the Govt. to review Ext.P1. Secondly the findings of fact recorded in Ext.P4 were disputed issues on which clear cut findings were entered in Ext.P1 based on evidence and probabilities. There is no material to indicate that those findings are based on mistaken facts or law. The strange aspect of the matter is that Ext.P1 was issued by Secretary to Government, who is the head of the Department. However, Ext.P4 was issued by an authority subordinate to him, who exercised review power under delegated powers. However, Government Pleader submitted that

Ext.P4 order was passed after obtaining approval from the Secretary to Govt. and Minister. Neither the Road Transport Corporations Act, under which KSRTC is constituted nor the National Highways (Collection of fees) Rules 1997, confer any review power on the Government. Assuming that there is inherent power of review to correct mistakes, the same should have been done by the same Officer who passed Ext.P1. Counsel for the KSRTC has relied on the decision of the Supreme Court in DR.(SMT.) KUNTESH GUPTA V. MANAGEMENT OF HINDU KANYA MAHAVIDYALAYA, SITAPUR (UP), (1987) 4 SCC 525, wherein the Supreme Court has held that quasi-judicial authorities are not entitled to review its own order, in the absence of express statutory power to that effect which squarely applies to the facts of this case. Besides the impropriety in getting the order of the Secretary to Govt. revised by a subordinate officer, though under delegated powers, it is seen from Ext.P4 that Addl. Secretary who passed the order has virtually reversed every finding in Ext.P1, treating the review petition as if it is an appeal before the Government. As against the finding in Ext.P1 that KSRTC started

operations over the new bridge from 23.9.1994, the Addl. Secretary in Ext.P4 came to the conclusion that KSRTC started operating the vehicles over the new bridge from 26.4.1994 onwards for which there is no basis at all. In fact first respondent himself filed O.P. in this Court for compelling the National Highway authorities to close down the old bridge and this Court's judgment was pronounced on 4.7.1994. The first respondent himself had no case that the old bridge was closed by NH authorities at any time prior to 23.9.1994. Therefore this finding in Ext.P4 contrary to the claim of the first respondent himself is perverse. So far as increase in number of vehicles by 10 is also concerned, there is no rationale basis. The full rate, that is Rs. 30/-, per vehicle per day applied by the Addl. Secretary is also arbitrary and unreasonable because if first respondent pressed for toll charges at the time of passing of vehicles, KSRTC would have been able to avail the benefit of concessional rate for onward and return trip. In fact, the National Highways Act and National Highways (Collection of Fees) Rules authorise to collect toll charges only when the vehicle passes over the bridge. If KSRTC claimed exemption, it is not known whether

the KSRTC would have got the benefit of exemption available to Government vehicles as it is virtually a Government department because even though it is a statutory corporation, the entire funds are from Govt. However, whatever toll charges which the KSRTC was made to pay under Ext.P1 is not under challenge and therefore I need not go into the question whether KSRTC is liable or not.

For the reasons found above, I find Ext.P4 issued in review proceedings is patently illegal, arbitrary, and unsustainable. O.P.No. 11166 of 1998 is consequently allowed quashing Ext.P4. Following the said reasoning, O.P.No. 5093 of 1998 filed by the first respondent has to be dismissed and I do so. There will be direction to the Registrar-General to foward to KSRTC the amount deposited by them with interest, if any, accrued, pursuant to interim order dated 13.1.2000 in W.A.No. 2656 of 1999, without any delay.

(C.N.RAMACHANDRAN NAIR)
Judge